

CITY OF NEWPORT

ORDINANCE NO. 2073

AN ORDINANCE REPEALING AND RE-ENACTING  
CHAPTER 4.05 OF THE NEWPORT MUNICIPAL CODE  
PERTAINING TO BUSINESS LICENSING

WHEREAS, the City of Newport Charter provides that the city has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant; and

WHEREAS, the above referenced grant of power has been interpreted as affording the city all legislative power under the home rule provisions of the Oregon Constitution; and

WHEREAS, it is the purpose of this ordinance to require that persons operating businesses are licensed to conduct business in the City of Newport; and

WHEREAS, the purpose of this ordinance is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of Newport through the regulation of businesses, occupations, and trades.

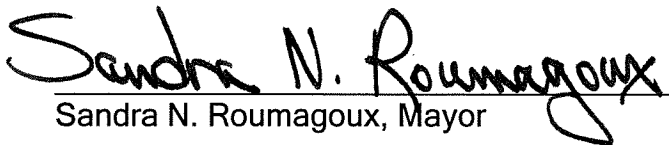
WHEREAS, the City Council adopted Ordinance No. 2030 pertaining to the licensing of businesses, on March 19, 2012, and it became effective on July 1, 2012, and the ordinance needs to be updated to address efficiencies and best practices.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

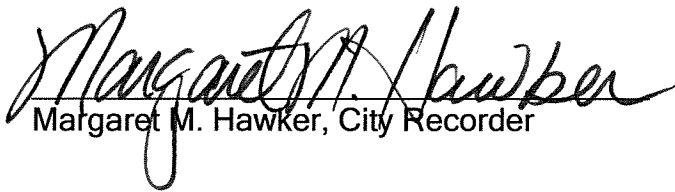
Section 1. Chapter 4.05 of the Newport Municipal Code, and all previous ordinances related to the licensing of businesses are repealed and re-enacted as shown in the attached Exhibit A.

Section 2. This ordinance will become effective thirty days from the date of adoption.

Adopted by the Newport City Council on the fifth day of January, 2015.

  
Sandra N. Roumagoux, Mayor

ATTEST:

  
Margaret M. Hawker, City Recorder

APPROVED AS TO FORM:

  
Steven E. Rich, City Attorney

**4.05.010 PURPOSE AND SCOPE**

The purpose of this Chapter is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of Newport through the regulation of businesses, occupations, and trades. A business need not be located within the city in order to be subject to the provisions of this Chapter. This Chapter serves the public interest by mandating that business will be carried on in compliance with applicable laws and in a manner that protects the public's health, safety, and welfare. The licensing provisions of this Chapter are enacted pursuant to the City Charter, Section 4, and the city's home rule authority as provided in the Oregon Constitution, Article XI, Section 2.

The business license fee shall be in addition to, and not in lieu of, any other license or permit fee, charge, or tax required under any other Municipal Code section or city ordinance. The business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regulatory or license requirement imposed by the city or state law.

**4.05.015 DEFINITIONS**

Business - Any for-profit or not-for-profit enterprise, establishment, store, shop, activity, profession, or undertaking of any nature operating within the city, whether conducted directly, indirectly, or cooperatively, including the rental of real property as defined in this ordinance, carried on for the purpose of generating income. As used in this Chapter, the phrase "doing business" means an act or series of acts performed in the course or pursuit of a business activity for more than twenty (20) hours in one calendar year.

City Manager - The City Manager of the City of Newport or the City Manager's designee.

Consignment Store Merchants - Persons who own goods and enter into an agreement with a consignee/seller to sell or market those goods. Consignment store merchants occupy space within a fixed facility or building which is owned or operated by consignee/seller for the purpose of displaying and selling such goods.

Employee - Any person who works within the city in the service of another person (the employer) and whose work performance details are controlled by the employer. This definition includes contractors and persons volunteering their time to an employer. Employees may be part-time or full-time and the number of employees will be measured using a full-time equivalent computation, in accordance with any applicable city rules.

Endorsement - Standards established by the city which a business license applicant must satisfy prior to the city issuing a business license. Any city-approved endorsements will be clearly noted on the business license.

Not-for-Profit Entity - Any entity organized and operated exclusively for a religious, charitable, humanitarian, or educational purpose and for whom the United States or the State of Oregon has granted an exemption from the payment of income tax on that basis.

Person - Any and all natural and legal persons, including individuals or public or private corporations, firms, partnerships, associations, organizations, syndicates, joint ventures, societies, or any other group or entity acting as a unit of individuals.

Rental of Real Property - The rental or offering for rent of real property. Rental of real property includes, but is not limited to, the following types of properties rented or offered for rent: hotel or motel rooms, automobile or tourist courts, boarding houses, bed and breakfast rooms, mobile homes or trailer parks, residential or vacation homes, multi-family dwelling units, moorage units, and commercial properties.

Special Event Vendors - A person engaged in selling or offering for sale any food, beverage, merchandise, or service within the city during a special event for which the event organizer has obtained a valid business license. Special event vendors must possess all other necessary city, county, and state permits and authorizations.

#### 4.05.020 BUSINESS LICENSE REQUIRED

No person shall do business within the city without a current, valid city business license, unless exempt under Section 4.05.025. To continue to lawfully conduct business in the city, every licensed business must submit an application for a

business license renewal by July 1<sup>st</sup> of every year. After that date, the business license expires.

#### 4.05.025 EXEMPTIONS

Persons engaged in the following activities are exempt from the business licensing requirements of this Chapter:

- A. On-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than six days in any calendar year.
- B. An act or series of acts performed in the course or pursuit of a single business activity for not more than twenty (20) hours in one calendar year.
- C. Special Event Vendor and Consignment Store Merchants, as long as the following requirements are met:
  - 1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license and provides the city with a list of all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;
  - 2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.
- D. Persons engaged in delivery of goods inside the city from points outside the city (e.g. logging trucks, freight vehicles, and commercial fishing vessels).
- E. Any city, county, state agency, special district, school district, or other government entity.
- F. A person's rental of no more than one residential dwelling unit for thirty (30) consecutive days or more.

- G. A person's rental of a dwelling unit within a condominium or townhouse development, where rental of the unit is required to be managed by a single entity pursuant to a covenant or other binding legal instrument. In such cases, the owners of each dwelling unit shall be viewed as having an ownership interest in a common business and only the business (i.e. the entity managing the units) is required to obtain a business license.
- H. Any unincorporated business activity carried on by individuals under the age of 18.
- I. Any business operating under a city franchise.
- J. Any person transacting and carrying on any business within the city which is exempt from such regulation by virtue of the Constitution or laws of the United States of America or the Constitution or laws of the State of Oregon.

#### 4.05.030 FEES

- A. This ordinance hereby establishes a business license application fee and a business license annual fee.
- B. The business license application fee amount shall be charged when a new or expired business license application is accepted by the city. The business license application fee is non-refundable. The amount of the business license fee shall be set from time to time by resolution of the City Council and shall be sufficient to recover the Finance Department's administrative cost of processing the applications. Persons holding expired business licenses will be charged a new business license application fee to re-apply.
- C. The business license annual fee shall be charged when a business license application is accepted by the city or when a business license renewal application is accepted by the city for the renewal of an existing, non-expired business license. The amount of the business license annual fee shall be determined by resolution of the City Council.
- D. Not-for-Profit Entities shall not be charged a business license annual fee. Such entities must still obtain a business license, pay the business license application fee, and annually renew the license at no cost.

- E. Persons expressly exempted from paying a city business license application fee or business license annual fee under any other lawful provision of state or city law shall not be subject to such fees. City shall document claimed exemptions, and may require that the person claiming the exemption provide proof of such exemption satisfactory to the City Manager.

#### 4.05.035                      MULTIPLE LOCATIONS OR BUSINESSES

- A. A person who does business from more than one physical location, and under a different business name or as a different business entity at the separate location, shall obtain a separate business license for each such location, name and entity.
- B. An owner of real property for rent who rents or offers for rent more than one dwelling unit of real property need only obtain one business license.
- C. In determining whether different business entities or activities should be categorized as only one business or as multiple businesses for the purposes of this ordinance, the City Manager shall consider the normal and ordinary customs and usages of business, including but not limited to: consideration of how the businesses are registered with other governmental agencies, such as the Oregon Secretary of State and the Internal Revenue Services.

#### 4.05.040                      APPLICATION

- A. All persons desiring to do business within the city shall, on a form provided by the city, apply for and maintain a business license unless exempt under this ordinance.
- B. An application for a new business license or annual renewal of an existing business license shall show: the corporate, trade, or registered name of the business; the complete address(es), email address(es), and telephone number(s) of the principal office of the business and any other locations or addresses within the city; the location or address of any real property offered for rent, including the number of dwelling units; the name(s), email address(es), and telephone number(s) of the owner(s) or principal(s); the number of employees; the state of incorporation if the

business is a corporation; and completed application materials for any applicable endorsements. On the basis of that application, the city shall compute the business license annual fee for that license according to the schedule of fees that the City Council shall establish from time to time by resolution. The applicant shall warrant by his/her signature that all representations made on the application form are the truth to the best of his/her knowledge. Any misrepresentations on the application shall constitute a violation of this ordinance.

- C. All applications shall be submitted before the person first does business in the city. A license shall be valid from the date of issuance until June 30<sup>th</sup> of the next calendar year. Applications received after December 31 will be charged one-half of the business license annual fee, as determined by City Council resolution.
- D. Upon receipt of a signed and completed application for a business license or renewal, the city shall inform the applicant of any business license application fees and business license annual fees due. Such fees shall be due and payable on the date the application is submitted.
- E. The city will endeavor to process all applications within 30 days of the date they are received or to notify the applicant in writing as to why the application cannot be processed within this timeframe and any steps that the applicant must take before the city will approve the application.

#### 4.05.045                      ISSUANCE; DISPLAY; TRANSFER

- A. Upon acceptance of a business license application, together with full payment of the applicable application fee and annual fee, the city shall issue a written receipt for same. The receipt shall serve as a temporary business license for an application that does not require an endorsement and shall be effective until the date of the city's approval or denial of the business license or renewal of same. The temporary business license shall be public notice that the person named therein is licensed to do business in the city.
- B. A business license will be issued by the city to replace the temporary business license once the business license application has been reviewed by the Community



Development, Public Works, Fire, and Police Departments, and approved by the City Manager.

- C. Upon receipt of a business license, a person who is required by this ordinance to have a business license shall cause the license to be prominently posted in a place available to the public at the principal location or office of the business for which the license is issued. If the principal location or office of the business is not located within the city, the business' employee, agent or representative must possess a copy of the license when doing business within the city. For business licenses issued to persons who offer real property for rent, the license need not be posted, but shall be made available upon city's request.
- D. Issuance of a business license, temporary or otherwise, shall not preclude enforcement against the licensee of any city ordinance or state statute.
- E. A business license may be transferred to another party if:  
1) the other party becomes the owner of the business; 2) no other significant change in the nature of the business has occurred; 3) if the existing business license contains no endorsements; and 4) if the new owner contacts the city to amend the business license application to accurately reflect the new ownership and any other new information. No other transfer or assignment of any license issued under this chapter shall be valid or permitted. Upon a significant change of the nature of the business, a new business license is required.
- F. A duplicate license shall be issued upon application and payment of a fee to replace the license previously issued which was lost or destroyed. The fee for a duplicate license shall be set by Council resolution.

#### 4.05.050 DISCLOSURE; DELINQUENCY

- A. Persons required to possess a business license shall, upon the city's request, make available all records, accounts and documents of every nature and in whatever media format which may tend to prove or disprove the applicant's statements on the business license application.
- B. A business license fee not paid in full within 30 days after it is due is delinquent and the city may avail itself of any and all remedies available to collect the fee, including but

not limited to termination of the license and/or referring the delinquency to a collection agency and citing the person for a violation of the Newport Municipal Code. In addition, a delinquency charge may be imposed in an amount established by Council resolution.

#### 4.05.055 ADMINISTRATION

- A. The City Manager is responsible for the administration of this Chapter and may adopt reasonable policies, procedures, administrative rules, or regulations to carry out the purpose and intent of this Chapter and to ensure that any health or safety issues related to the applicant's business are identified prior to the city issuing a business license. The City Manager shall provide the City Council with a report of any administrative rule adoptions or amendments regarding this ordinance. The city may initiate the process for remediating any health or safety issues at any time, whether before or after the issuance of the business license.

#### 4.05.060 DENIAL OR REVOCATION

- A. The City Manager may deny a business license or a license renewal application, or revoke a business license issued under the provisions of this chapter after notice as provided below, for any of the following causes:
1. Fraud, misrepresentation or false statement contained in the application for a license or failure to supply the requested application information;
  2. A violation of this Chapter or of any city, county, or state law or regulation;
  3. Conducting the licensed activity in an unlawful manner, inconsistent with the requirements of this Chapter, or in such a manner so as to constitute a breach of the peace, or to endanger or risk the health, safety, or general welfare of the public.
- B. Notice of denial or revocation of a license under subsection A., above, shall be given in writing to the applicant or licensee, setting forth specifically the grounds of denial or revocation. A notice of denial may be given to the applicant at any time during the application review process. A notice of revocation shall be mailed to the

licensee at the licensee's last known address at least ten (10) calendar days before the date of the revocation. The last known address is deemed to be the address provided to the city by the applicant on the business license application unless the applicant thereafter gives the city written notice of a different address.

- C. An applicant shall be entitled to a refund of the business license annual fee in the event that their business license application or annual renewal is denied.

#### 4.05.065 VIOLATIONS

- A. A violation of this Chapter shall constitute a civil violation of the laws of Newport and shall be prosecuted at the city's discretion by the filing of a complaint filed in municipal court or in an Oregon state court of proper jurisdiction. Any person found to have violated this Chapter shall be subject to a civil penalty in an amount established by Council resolution.
- B. The conviction of any person for violation of this Chapter shall not act or relieve such person from the requirement to register a business or obtain a business license. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.
- C. In the event any provision of this chapter is violated by a firm or corporation, the officer, officers or individuals responsible for the violation shall be personally subject to the penalties imposed by this section.

#### 4.05.070 EVIDENCE OF DOING BUSINESS

In the trial or hearing on any alleged violation of this Chapter, evidence of advertisements by newspaper, radio, television, internet or other medium or by signs displayed for public view, that a business activity was being conducted by the alleged violator within the city, including expressly or implied offering to sell goods, services, or lodging to the public or any segment thereof, shall constitute prima facie evidence that the alleged violator was conducting a business activity within the city on the day or date during which such representations were made.

#### 4.05.075 APPEAL

- A. Any person aggrieved by the City Manager's (i) denial of a

business license application; (ii) revocation of a business license; (iii) assessment of business license application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issued or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day that the rules or regulations were misapplied according to the applicant's or licensee's allegation.

- B. The City Council shall set a time and place for a hearing on the appeal within thirty (30) calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee's last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.